

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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Tom Colicchio and Chloe Coscarelli,	:	
	:	
Plaintiffs,	:	Index No. 19-cv-2325
	:	
-against-	:	COMPLAINT
	:	
BC Hospitality Group LLC (formerly CCSW	:	
LLC),	:	
	:	
Defendant.	:	
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INTRODUCTION

1. Chloe is a young female entrepreneur, and BCHG—led by James Haber and multi-billion dollar Bain Capital—is trying to crush her. As set forth below, BCHG has maliciously set out to bully, harass, and intimidate a young, driven, and talented female vegan chef from pursuing her dreams.

2. Chloe Coscarelli (“Chloe”) is a rising-star and widely-known chef. She attracted significant media attention in June 2010 as the first vegan chef to capture the top prize on a nationally televised cooking competition, Food Network’s *Cupcake Wars*. Debunking the myth that vegan cooking is bland and visually unenticing, Chloe shares her bright, colorful, and tasteful recipes using fresh, healthy ingredients. She has published four best-selling cookbooks too, and Forbes placed Chloe on its “30 under 30” list. Above all, Chloe is passionate about expanding vegan cuisine to a broader audience.

3. But in the last several years, the defendant BC Hospitality Group (BCHG)—led by James Haber and ESquared Hospitality—has embarked on a vicious campaign to interfere with, disrupt, and outright stop Chloe’s growing success at all costs. BCHG owns and operates

several “by CHLOE” restaurants. And while Chloe originally founded “by CHLOE” and partnered with BCHG’s predecessor in that effort, BCHG has since tried to oust her from “by CHLOE” so it could exploit Chloe’s name and keep all the profits for itself and its corporate investors. Indeed, Chloe has not been involved with “by CHLOE” for two years—about the same amount of time since the brand started to diminish and food quality suffered. Since that time, sales at “by CHLOE” have fallen and BCHG has already closed one store. BCHG started its campaign of threats and intimidation when it tried to kick Chloe out of the “by CHLOE” business too.

4. BCHG is a corporate entity with unlimited resources. In 2018, for instance, Bain Capital—the multi-billion dollar investment firm—disclosed in its SEC filing that it invested over \$31 million dollars in BCHG. And BCHG has used those resources to send nasty letters from its corporate attorneys threatening to sue Chloe if she continues to pursue her dream and craft as a vegan chef. BCHG has threatened to sue Chloe over her most recent cookbook, *CHLOE FLAVOR*. BCHG has also threatened to sue Chloe over her food stall at the St. Roch Market called Chef Chloe and the Vegan Café. And yesterday, BCHG added yet another threat letter to this barrage.

5. On March 12, 2019, Chloe and world-renown chef and television-personality Tom Colicchio (“Colicchio”) announced their partnership on a vegan pop-up. For only three weeks, Chloe and Colicchio would collaborate on a vegan pop-up they named “Supernatural”. They named the pop-up Supernatural for two reasons. First, the food *is* super natural. But also the Chloe and Colicchio partnership provided a unique opportunity for an established, older male non-vegan chef to partner with a young, upcoming female vegan chef. In their view, this

opportunity—absent from the restaurant industry to their knowledge—was supernatural itself.

Here are Chloe and Colicchio at Supernatural:



6. Not one full day after Chloe and Colicchio opened Supernatural, BCHG unleashed its lawyers to spare no expense to try to shut it down. BCHG’s corporate lawyer served a threat letter on Chloe and Colicchio that accused them both of federal trademark infringement. Perhaps recognizing that the current state of “by CHLOE” pales in comparison with the chef-driven concepts by Chloe and Colicchio in Supernatural, BCHG alleged that Chloe and Colicchio’s Supernatural restaurant somehow infringed BCHG’s “by CHLOE” trademark. These threats are baseless because there is no likelihood of confusion between Chloe and

Colicchio's pop-up and any alleged "by CHLOE" trademark. To be sure, neither Chloe nor Colicchio have any association with "by CHLOE," nor is either seeking it through Supernatural.

7. In fact, any suggestion by BCHG that anyone would conflate what James Haber and ESquared offer with the work of Colicchio and Craft is pure fantasy on BCHG's part. Colicchio is an eight-time James Beard Award winner. He has owned and operated Crafted Hospitality for 18 years. And before Craft, he was a partner with the prominent Gramercy Tavern. Colicchio has won an Emmy Award for his television work as well. Quite simply, Colicchio would never look to associate himself or his business with BCHG, James Haber, or ESquared. There is clearly no risk of confusion between Colicchio's esteemed, crafted, and established work and that which BCHG, ESquared, and James Haber have to offer.

8. BCHG's threat letter continued to threaten Chloe personally. BCHG alleged that Chloe's role as a vegan chef violated an old contract that had been in place when she was involved with "by CHLOE." According to BCHG, *only BCHG* is allowed to run a vegan restaurant that involves Chloe's name, face, or likeness. Put another way, BCHG has threatened that Chloe—herself—is not allowed to be associated with a vegan restaurant anymore. This threat too is meritless.

9. BCHG's threats and harassment of Chloe have gone on far too long. Chloe is a talented, devoted, and authentic vegan chef who just wants to work on her craft and introduce healthy, fun, and delicious vegan food to a broader audience. She and Colicchio, therefore, bring this Complaint for a declaratory judgment that BCHG's threat letters are improper and baseless because Supernatural does not infringe any BCHG trademark, and no old—and ineffective—agreement between Chloe and BCHG's predecessor prevents Chloe from working as a chef at Supernatural.

PARTIES

10. Plaintiff Chloe Coscarelli is an individual.

11. Plaintiff Tom Colicchio is an individual.

12. Defendant BC Hospitality Group LLC (“BCHG” or the “Company”) is a limited liability company organized under the laws of New York with an address at 950 3rd Avenue, 22nd Floor, New York, New York 10022.

JURISDICTION

13. This declaratory judgment action arises under the trademark laws of the United States. This Court has subject matter jurisdiction over this action as a result under 15 U.S.C. §§ 1121, 1125 and 28 U.S.C. §§ 2201, 2202

14. This Court has pendent and supplemental jurisdiction under 28 U.S.C. § 1367 for Count II.

15. This Court has personal jurisdiction over BCHG because it resides in New York.

16. Venue is proper in this district by agreement between Chloe and BCHG. Venue is also proper under 28 U.S.C. §§ 1391(b) and (d) because BCHG resides in this district.

BACKGROUND ON CHLOE AND COLICCHIO

17. Chloe and Colicchio are famous and widely known chefs, television personalities, and best-selling culinary authors.

Chloe Coscarelli

18. Chloe is widely known as “Chloe” and “Chef Chloe.” She has spent years bringing healthy, delicious vegan cuisine to a wider audience. She has worked at some of the best-regarded gourmet vegan restaurants in America, including San Francisco’s Millennium.

19. Chloe attracted significant media attention as the first vegan chef to win a culinary competition on national television—Food Network’s *Cupcake Wars*. She has since

authored four best-selling vegan cookbooks. Chloe was also the first chef to host a vegan dinner at the prestigious James Beard House, and she cooked the first ever sold out vegan dinner at the South Beach Wine & Food Festival.

20. The New York Times, Zagat, and Forbes have each recognized Chloe in their “30 under 30” series. Chloe makes frequent appearances on national television networks, like ABC, NBC, CBS, Food Network, and The Cooking Channel, and is a regular contributor on NBC’s TODAY Show. Chloe’s success has earned her recognition as “America’s favorite vegan chef.”

Tom Colicchio

21. Colicchio is widely known as America’s “Top Chef.”

22. Since 2006, Colicchio has served as the head judge on the television show *Top Chef*. He received an Emmy Award in honor of this work.

23. Colicchio has founded or co-founded many enormously successful restaurants around the United States, including the famed Gramercy Tavern in New York City; the Crafted Hospitality family of restaurants, which has locations in New York City, Los Angeles, and Las Vegas, and includes the namesake restaurant Craft; the fast-casual chain ‘Wichcraft in New York City, and Small Batch in Garden City, New York.

24. Before opening his own restaurants, Colicchio worked in the kitchens of several prominent New York restaurants, like The Quilted Giraffe and Gotham Bar & Grill.

25. The culinary industry has recognized Colicchio for his craft and achievements. The prestigious James Beard Foundation, for instance, has honored Colicchio with awards for Best Chefs in America, Best New Restaurant, Outstanding Chef, and Outstanding Service, among others. In total, he is an eight-time James Beard Award winner. ADWEEK magazine named Colicchio as one of the “30 Most Influential People in Food.”

26. Colicchio has also authored several cookbooks, and served as an executive producer for the documentary *A Place at the Table* about hunger in the United States. The New York Times labeled Colicchio “The Citizen Chef” for his political advocacy and charity work on issues of food policy and hunger.

BACKGROUND ON BCHG AND ITS INVESTORS

27. BCHG is owned in large part by ESquared Hospitality LLC. ESquared is effectively controlled by its CEO James Haber through various limited liability companies and trusts.

28. BCHG operates several fast-casual vegan restaurants that still bear the name “by Chloe.” BCHG still does so even though Chloe has no current role or involvement in these restaurants. Rather, BCHG—at the direction of Haber and ESquared—continues to exploit Chloe’s name and reputation as a means of maximizing their corporate profit and gains. The following exchange between James Haber and his daughter from August 2016 highlights this point:

Haber: “We milk till we can’t!”

Haber’s daughter: “Milk what?”

Haber: “Her name.”

29. But once Chloe stopped her involvement with “by Chloe,” it appears BCHG has cut costs and sacrificed quality. Chloe has heard from frustrated customers that “by Chloe” has served, and continues to serve, poor quality food in restaurants. In published reviews since Chloe disassociated from “by CHLOE,” for instance, food critics have found the food “heavily-processed,” “‘fake’-tasting,” and “depressingly bland.” BCHG likewise opened, and has already closed, one of its failed attempts at “Sweets by Chloe”—with which Chloe had no involvement.

BCHG “by Chloe” restaurants have been cited for violating both food safety and sanitation standards as well. Echoing Gordon Gekko’s famous “greed is good” philosophy, BCHG’s “by Chloe” restaurants are now focused only on maximizing profit for the corporate entity and investors without the dedication to vegan cuisine and craft to which Chloe has dedicated her career.

Bain Capital

30. Bain Capital is a significant investor in BCHG.

31. Bain Capital holds itself out as one of the world’s largest private investment firms. It has over \$105 billion in assets under its management.

32. In 2018, SEC filings reflect that Bain Capital invested over \$31 million in BCHG.

33. Since its investment in BCHG, Bain Capital has known about and actively participated in BCHG’s intimidation and harassment efforts directed at Chloe. Both BCHG and Bain Capital have conspired to deploy large sums of money to try to prevent Chloe from working as a vegan chef.

BACKGROUND ON CHLOE AND COLICCHIO’S “SUPERNATURAL”

34. Chloe and Colicchio agreed to combine their talents and collaborate on a vegan “pop-up.” They named this restaurant “Supernatural.” This name highlights that the food is super natural. And it supports the unique collaboration by an established, older male chef with an upcoming, driven female vegan chef. In fact, Chloe first contacted Colicchio after he wrote “An Open Letter to (Male) Chefs” on the platform Medium about rampant harassment in the restaurant industry.

35. On March 12, 2019, they opened “Supernatural” at 43 East 19th Street, New York, New York 10023. Here is Colicchio’s announcement of Supernatural on Facebook:



36. Chloe and Colicchio debuted the menu for Supernatural together. For lunch (and select dinner times), this menu features creative, healthy, and vegan options, like “Beet Mac & Cheese,” “Cauliflower Tacos,” and an “animal lover burrito,” among other delicious items. And for dessert, they offer “sprinkle cake” and “chocolate s’mores cookies.” Chloe and Colicchio’s full menu is available at their website: <https://www.youaresupernatural.com/>.

37. Chloe and Colicchio’s logo for Supernatural is also featured on its website:



38. As a pop-up, Chloe and Colicchio scheduled the restaurant to remain open only for a limited time until March 30, 2019

BCHG'S THREATS TO CHLOE AND COLICCHIO

39. BCHG became immediately threatened and insecure about Chloe and Colicchio's collaboration.

40. One day after learning of Supernatural, BCHG's attorney sent a letter to each of them demanding that they cease their operations by March 15, 2019. Apparently BCHG feared that their declining business would continue to lose customers if, for a mere two weeks until March 30, the public were allowed to choose the innovative and exciting cuisine at Chloe and Colicchio's Supernatural instead of the uninspired cooking now peddled at "by CHLOE."

41. In the letter, BCHG erroneously contends that the restaurant is called "CHLOE X TOM." To the contrary, the restaurant is called "Supernatural," as clearly shown above.

42. BCHG then threatened and alleged federal trademark infringement because of its alleged interest in a "by CHLOE" trademark. In the letter, BCHG touted its "flourishing

popularity” by referencing a mere “22,500 likes and followers on Facebook” and only “6,500 followers on Twitter.” According to BCHG, Chloe and Colicchio’s Supernatural restaurant is somehow “a deliberate and malicious attempt to deceive the public into assuming that the ‘CHLOE X TOM’ casual vegan restaurant is associated with, related to, or endorsed or sponsored by BCHG’S by CHLOE.® products and services.”

43. To put things in perspective here, Colicchio has over 930,000 followers on Twitter, and over 117,000 likes and followers on Facebook; and Chloe’s Facebook page has over 125,000 likes and followers, and she has 29,500 followers on Twitter. The undisputed fact, which BCHG’s letter ignores, is that “by CHLOE” pales in comparison to the recognition that Chloe and Colicchio have earned through their talent and craft. And to be clear, neither Chloe nor Colicchio want their innovative and fresh collaboration at Supernatural to have any association with BCHG and by CHLOE. Chloe and Colicchio had no malicious intent to deceive the public about a connection with BCHG and by CHLOE because Supernatural has *no* connection with BCHG and by CHLOE.

44. BCHG’s threat letter continues by alleging that Chloe’s involvement with Supernatural violates an old agreement that Chloe had entered into when she was once associated with “by Chloe” years ago. This agreement is called the Name, Face and Likeness (“NFL”) Agreement.

45. According to BCHG, the NFL Agreement prevents Chloe from any connection to any casual, vegan restaurant for the rest of her life.

46. Chloe and Colicchio file this Complaint to stop these baseless and unwarranted threats. Chloe will not tolerate BCHG’s efforts to bully her out of her passion.

**COUNT I: DECLARATORY JUDGMENT THAT CHLOE AND COLICCHIO'S
"SUPERNATURAL" POP-UP DOES NOT INFRINGE ANY BCHG
TRADEMARK IN "BY CHLOE"**

(by Plaintiffs Chloe and Colicchio)

47. Chloe and Colicchio incorporate by reference paragraphs 1 through 46.

48. BCHG has asserted it owns a valid trademark in "by CHLOE."

49. BCHG has asserted that Chloe and Colicchio's Supernatural restaurant infringes its alleged "by CHLOE" trademark.

50. Chloe and Colicchio deny that their Supernatural restaurant infringes any trademark of BCHG. For example, there is no likelihood of confusion between Supernatural and "by CHLOE." Nor would there be any likelihood of confusion even if Chloe and Colicchio branded their restaurant "CHLOE X TOM," as BCHG erroneously contends. Chloe and Colicchio each have their own unique recognition as chefs that dwarfs and prevents any confusion with BCHG's minimal and diminishing "by CHLOE" brand.

51. Based on BCHG's threats and allegations, an actual controversy exists between BCHG, on one hand, and Chloe and Colicchio, on the other.

52. Chloe and Colicchio are therefore entitled to a judicial declaration that their Supernatural restaurant does not infringe on BCHG's alleged "by CHLOE." trademark.

**COUNT II: DECLARATORY JUDGMENT THAT CHLOE HAS NOT
BREACHED THE NFL AGREEMENT THROUGH HER INVOLVEMENT IN
"SUPERNATURAL"**

(by Plaintiff Chloe)

53. Chloe incorporates by reference paragraphs 1 through 52.

54. On November 7, 2014, Chloe and BCHG (then known as CCSW) entered into the NFL Agreement.

55. The purpose of the NFL Agreement was for Chloe to provide a limited-use license to her name, face, and likeness rights to the company operating “fast-casual” vegan restaurant “by CHLOE.”

56. Chloe terminated this license and the NFL Agreement on March 16, 2018.

57. Even though Chloe has terminated the agreement, BCHG continues to make threats and allegations that BCHG—and not Chloe—is the only company that can use Chloe’s name, face, or likeness in connection with a fast-casual vegan restaurant. Put another way, BCHG contends that the NFL Agreement prevents Chloe from her livelihood as a vegan chef in fast-casual restaurants. These allegations lack any merit.

58. BCHG’s threat letter and allegation that Chloe has violated the NFL Agreement through her role in Supernatural presents an actual controversy between BCHG and Chloe.

59. To start, the NFL Agreement is not effective because Chloe terminated it almost one year ago.

60. But even if the NFL Agreement remained valid, no provision in the NFL Agreement would prevent Chloe from operating her own fast-casual vegan restaurant. And even then, Supernatural does not constitute a “fast-casual” vegan restaurant, as that term is reasonably understood. To the contrary, Supernatural is a “pop-up”—a distinct category of dining.

61. Chloe is therefore entitled to a judicial declaration that she did not breach the NFL Agreement through her role with the Supernatural pop-up.

PRAYER FOR RELIEF

Plaintiffs Chloe and Colicchio request the following relief:

- a. A declaration that Chloe and Colicchio's Supernatural pop-up does not infringe any rights BCHG has in "by CHLOE." trademark;
- b. A declaration that Chloe has not breached the NFL Agreement through her role with the Supernatural pop-up;
- c. A declaration that this is an exceptional case, and an award of attorneys' fees and costs to Chloe and Colicchio; and
- d. Such other and further relief as the Court may deem just and proper.

Dated: March 14, 2019

Respectfully submitted,

By: /s/ Ronald J. Schutz

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